

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ERNEST N. BENJAMIN,
Petitioner,

v.

LUIS SPENCER,
Respondent.

Civil Action No. 2004-11025-JLT

U.S. DISTRICT COURT
DISTRICT OF MASS.


RESPONDENT'S MOTION TO DISMISS

Luis Spencer, Superintendent of the Massachusetts Correctional Institution – Norfolk, the respondent, respectfully moves this Court to dismiss the above-captioned petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). The petition is subject to dismissal on two independent grounds. First, this Court lacks jurisdiction where the petition is a “second or successive” petition that has not been authorized by the United States Court of Appeals for the First Circuit. *See* 28 U.S.C. §2244(b). Secondly, in the alternative, the petition must be dismissed as time-barred pursuant to 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions.

WHEREFORE, the respondent respectfully requests that this Court dismiss this petition with prejudice.

Respectfully submitted,

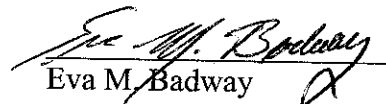
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Dated: June 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on June 29, 2004, I caused to be served a true and correct copy of the foregoing Motion to Dismiss by mailing a copy of the same by first class mail, postage prepaid, and addressed as follows: Ernest N. Benjamin, *pro se*, MCI- Norfolk, 2 Clark Street, P.O. Box 43, Norfolk, MA 02056.


Eva M. Badway